IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 193 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

JAYENDRA H KHARAWALA - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant
NOTICE SERVED for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 13/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1.The following question has been referred by the Income

Tax Appellate Tribunal, Ahmedabad Bench “C” under Section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income Tax:

> “Whether the Appellate Tribunal is right in law and on facts in deleting the interest levied u/s 215 of the Income Tax Act amounting to Rs.1,56,970/-?”

2. The assessment year is 1986-87 and the relevant accounting period is the year ended on 31st March 1986. While framing the assessment on 7/2/1989 under Section 143(3) of the Income Tax Act, 1961 (the Act), the assessing officer observed “charge interest under section 139(8) and 215 / 217”. The assessee carried the matter in appeal before CIT (Appeals) who vide his order held that ground of appeal challenging the levy of interest under Section 139(8) of the Act was not entertained as the legality of the basis of levy had not been challenged as being incorrect.

3. However, the CIT (Appeals) upheld the submissions of the assessee that the assessee was not liable to be charged interest under Section 215 of the Act. It was

held by CIT (Appeals) that firstly, the assessee could not have anticipated the addition of income on the basis of assessments for assessment years 1982-83 and 1983-84 being revised upwards under Section 263 of the Act, and secondly, in similar set of facts and circumstances in assessee's own case for assessment year 1985-86, similar levy of interest under Section 215 of the Act was deleted.

4. Revenue challenged the order of Commissioner (Appeals) on this count before the Tribunal. The Tribunal, by its order dated 25/10/1993, upheld the order of Commissioner (Appeals). While doing so, the Tribunal took note of the fact that the order of Commissioner (Appeals) for the immediately preceding assessment year, namely assessment year 1985-86, had been accepted by revenue and no appeal had been preferred therefrom before the Tribunal. The Tribunal also accepted the findings of Commissioner (Appeals) that, in the facts and circumstances of the case, the assessee could not have anticipated the additions in question considering the fact that the Commissioner had, while acting under Section 263 of the act for earlier assessment years, namely, assessment years 1982-83 and 1983-84, framed

the order only in March 1986 when the last installment of advance tax had to be paid.

5. Mr.M.R.Bhatt, the learned senior standing counsel has been heard. Though served, there is no appearance on behalf of the respondent assessee.

6. According to Mr.Bhatt, the Tribunal had committed an error in holding that no interest was leviable under Section 215(1) of the Act. The said provision was automatic and did not grant any discretion to the assessing authority. Not only that, it was contended, once the difference between the two parameters namely, advance tax paid and the assessed tax exceeded the prescribed limit, the assessee could not be permitted to deny his liability to interest under Section 215 of the Act. In case any extenuating factors or circumstances justified, according to the assessee, a lower amount of advance tax, that would be a ground for seeking relief under sub-section (4)of Section 215 of the Act, but could not be pleaded as part of denial of liability.

7. In the case of Commissioner of Income Tax v. Rainbow

Industries P. Ltd., [2005] 227 ITR 507, this Court, while dealing with almost a similar fact situation, has analyzed the scheme of computation of advance tax in the following terms :

> “Under section 211 of the Act, the Legislature has provided dates during the financial year on which advance tax becomes payable in equal installments. Under section 209A of the Act, computation and payment of advance tax by an assessee are provided for. However, actual computation of advance tax, viz., the basis on which an assessee is required to estimate the advance tax payable by him, is laid down in section 209 of the Act. In each financial year, once an assessee finds that the current income is likely to exceed the limit specified in section 208(2) of the Act, an assessee is obliged to forward an estimate of his current income and the advance tax payable on such current income. While computing the advance tax payable under section 209 of the Act, the assessee is required to take into consideration his total income of the latest previous year in respect of which, the assessee has been assessed by way of regular

assessment; the assessee is also required to ascertain the total income as shown in the return of income of the latest previous year for a year which is later in point of time to the assessment year for which assessment is framed and consider the basis on which tax has been paid by the assessee under section 140A of the Act for such year. Thereafter, the assessee is required to ascertain which of the two figures exceeds the other, viz., whether the latest assessed income or other way round and taking that as a base, the assessee is required to work out the current income and the liability to pay advance tax.

If the aforesaid scheme is borne in mind, it is apparent that unless and until the Revenue is in a position to state that either of the figures adopted for the purposes of computing the current income and the advance tax payable is incorrect in any manner whatsoever, it will not be possible to accept the contention of the Revenue that levy of interest under section 215 of the Act being mandatory in nature, nothing further is required to be seen."

8.Applying the aforesaid ratio to the facts found

concurrently by both the CIT (Appeals) and the Tribunal, it is apparent that once the addition of income, made on the basis of revisional proceedings for earlier assessment years, is kept out of consideration, the assessee had paid advance tax to the tune of Rs.2,54,743/- which did not fall below the stipulated limit of 75% of the total tax payable. Therefore, it is not possible to accept the stand of the revenue that the assessee had committed a default which made the assessee liable to be charged interest under Section 215 of the Act. In fact, nothing has been brought on record to rebut the findings recorded by the Commissioner (Appeals) and the Tribunal, namely the assessee could not have anticipated the upward revision in income, and that too, for earlier assessment years, which was finalized only in March 1986. The revenue has not even pleaded, much less established, that the assessee had the knowledge and could have anticipated at the time when it filed its estimate of advance tax payable by it.

9. In the result, it is held that the Tribunal was right in law in deleting the interest levied under Section 215 of the Act amounting to Rs.1,56,970/-. The

question is accordingly answered in the affirmative i.e. in favour of the assessee and against the revenue.

10.The reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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